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June 9, 2020

Via ECF

Hon. Christian F. Hummel
United States Magistrate Judge
United States District Court—NDNY
James T. Foley Courthouse
Albany, N.Y. 12207

PLEASE REPLY TO:

Troy Office

Re: Serenity Alpha LLC et. al. v. Northway Mining LLC, et al.
Case No.: 19-cv-00501

Dear Judge Hummel:

I write in response to the plaintiff's "emergency motion" for expedited discovery of yesterday. (ECF Doc. #69.) I am treating the plaintiff's motion as a letter motion, because it was filed without a Notice of Motion, Order to Show Cause, or any specified return date.

There is no basis for a "motion" for discovery at this time. Under Rule 26(d)(1), the parties may initiate discovery after the parties have held a discovery planning conference (or call) amongst themselves, as provided for in Rule 26(f). As discussed below, that has not happened yet, but we certainly are (and have been) willing to discuss a discovery plan with the plaintiffs' counsel. And there is nothing stopping the plaintiffs from requesting a Rule 16 scheduling conference from the Court.¹

But to the extent the plaintiffs offer their filing as a "motion" for discovery, requiring any more response than this, I suggest it is not ripe because: (i) the parties have not had a Rule 26(f) planning conference yet to see whether was can agree to a discovery plan; and (ii) the plaintiffs did not comply with Local Rule 7.1(d)'s requirement that the parties "make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking court intervention." As the email exchange attached to the plaintiffs' filing indicates (ECF Doc. #69-1), the parties started corresponding about times for a conference call last Thursday night. I do not want to bore the Court with the details, but our office proposed that we have a call on Friday before 1:00, and Mr. Williams said he could not do it that early. Just because the parties did not schedule something by yesterday does not mean that there was foundation for a "motion" to resolve a "dispute."

¹ It is also unclear why the matter is suddenly an emergency. The case has been pending for over a year, and the plaintiffs have not even served most of the defendants (including several of the corporate defendants who can be easily served through the New York State Department of State). Upon information and belief, this is probably why the Court has not held a Rule 16 conference yet. It is obviously less than optimal to begin discovery before most of the defendants have been served.

By copy of this letter to Mr. Williams, I will suggest that the parties proceed with having a Rule 26(f) conference amongst themselves so we can discuss the discovery plan he has in mind and, in the meantime, perhaps the Court can treat his emergency “motion” as a request for a Rule 16 conference.

Sincerely,

E. STEWART JONES HACKER MURPHY, LLP

A handwritten signature in black ink, appearing to read "Benjamin F. Neidl", with a long horizontal flourish extending to the right.

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c.c. Edward Williams, Esq. (via ECF)
John F. Harwick, Esq. (via ECF)